IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 110 OF 2006

Shri Sham Shankarrao Kapote & Anr. ...Appellants
V/s.
Nitco Trading Company & Anr. ...Respondents

Ms.P.P. Tendulkar for M.S. Karnik for Appellants.
Shri Jaydeep Pawar for Respondents.

CORAM : A.M. KHANWILKAR, J.

DATED : JULY 25, 2006

P.C. :-

. Heard Counsel for the parties. The Court below has adverted to all the relevant circumstances including the fact that the applicant admitted that Medical Certificate indicating that the applicant was suffering from illness on 6th February, 2003 was not produced before the Court. If it is so, no fault can be found with the conclusion reached by the Court below.

2. Inspite of sufficient opportunity given to the plaintiffs, they did not remain present and instead failed to pursue the matter with due deligence. Suffice it to observe that in so far as order dated 6th February, 2003 is concerned, the Court has found that

there was no sufficient cause to excuse the absence of the parties. It is not possible for this Court to overturn the said finding of fact established from the admission of the applicant that Medical Certificate indicating that the applicant was suffering from illness on 6th February, 2003 was not brought before the Court alongwith the application as noted in para 5 of the order. The Court below had adverted to the manner in which the proceedings have been conducted by the plaintiffs in the past. In as much as the application for adjournment being repeatedly made by the plaintiff after framing of issues on 15th February, 2002 which also is relevant consideration for exercising discretionary decision.

3. Hence, this appeal is devoid of merits and the same is dismissed.

(A.M. KHANWILKAR, J.)